

## AGENDA ITEM EXECUTIVE SUMMARY: Proposed Settlement Agreement – Pointe Educational Services

### Issue

Whether to adopt the proposed Settlement Agreement related to Pointe Educational Services' ("Charter Holder") failure to administer AIMS Science in FY 2018 as required by law and its Charter.

### Background

At its September 10, 2018 meeting, the Board voted to issue a notice of intent to revoke the charter contract of Pointe Educational Services for the reason that the Charter Holder failed to administer the AIMS Science statewide assessment to its students in school year 2017-2018, thereby violating its charter contract and state law. AIMS Science was required to be administered to its students in grades 4, 8, and high school (typically grade 10) during the testing window that ran March 26, 2018-April 20, 2018.

The matter is set for a charter revocation hearing at the Office of Administrative Hearings on December 12-14, 2018.

The Charter Holder requested an informal settlement conference, which was held on October 2, 2018. A copy of the terms of a proposed Settlement Agreement may be found in *Appendix A*. The Pointe Educational Services corporate board has adopted the terms of the proposed Settlement Agreement.

**Appendix A**  
**Settlement Agreement**

**BEFORE THE ARIZONA STATE BOARD  
FOR CHARTER SCHOOLS**

In the Matter of:

**POINTE EDUCATIONAL SERVICES**, a non-profit corporation, operating **PINNACLE POINTE ACADEMY, NORTH POINTE PREPARATORY**, and **CANYON POINTE ACADEMY**, charter schools

No. 19F-RV-001-BCS

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Pointe Educational Services (“PES”), a nonprofit corporation organized under the laws of the state of Arizona and operating three charter schools, Pinnacle Pointe Academy, North Pointe Preparatory, and Canyon Pointe Academy, collectively referred to herein as the “Schools,” and the Arizona State Board for Charter Schools (“Board”), collectively referred to herein as the “Parties,” to resolve the Board’s decision to issue a Notice of Intent to Revoke the Charter of PES.

**I. JURISDICTION**

The Board is charged by Arizona Revised Statutes (“A.R.S.”) §§ 15-182(E)(1) and (2) and 15-183(R) with granting charter status to qualifying applicants for charter schools and exercising general supervision over the charter schools it sponsors. The Board may revoke a charter of a school it sponsors at any time if the charter school breaches one or more provisions of its charter or if the Board determines that the charter operator has failed to comply with charter school statutes or any provision of law from which the charter school is not exempt.

A.R.S. § 15-183(I)(3). The final determination of whether to revoke the charter shall be made at the public hearing called for such purpose. A.R.S. § 15-183(I)(5).

## **II. STIPULATED FACTS**

1. Charter schools are established under A.R.S. § 15-181 *et seq.* to provide a learning environment that will improve pupil achievement, to provide additional academic choices for parents and pupils and to serve as alternatives to traditional public schools.

2. The Schools are charter schools authorized to operate under the sponsorship of the Board pursuant to a renewal charter contract (“Charter”) executed on May 8, 2015 between PES and the Board.

3. Pursuant to A.R.S. § 15-183 and the Charter, the Board sponsors PES to operate three schools to serve students in kindergarten through twelfth grade. Pinnacle Pointe Academy is approved to serve students in kindergarten through sixth grade, North Pointe Preparatory is approved to serve students in seventh grade through twelfth grade, and Canyon Pointe Academy is approved to serve students in kindergarten through sixth grade.

4. Board rule and the Charter require that PES designate as its Charter Representative an individual authorized to execute documents on behalf of PES and to serve as the point of contact with the Board for the purposes of communication and accountability to state, federal or local laws, ordinances or rules or regulations, and Charter terms and conditions. Jody Johnson is the individual currently serving as PES’ Charter Representative.

5. The Charter requires that PES comply with all state, federal and local laws applicable to the operation of a charter school.

6. The Charter imposes a duty of care for complying with the provisions of the Charter, all applicable laws, regulations, and reporting requirements on PES and its officers, directors, members, and partners.

7. The Charter permits the Board to revoke or not renew the Charter for any material breach of the Charter and/or violation of state, federal or local laws, ordinances or rules or regulations; for conditions which threaten the health, safety, or welfare of the students or staff of the school or of the general public; or as provided by law.

8. Under the Every Student Succeeds Act, Section 34 CFR § 200.2(a)(1), each state, in consultation with its Local Education Agencies (“LEA”), must implement a system of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading/language arts, and science.

9. Under the Every Student Succeeds Act, Section 34 CFR § 200.2(b)(1)(ii), each state must administer the assessments required under Section 34 CFR § 200.2(a)(1) to all students consistent with Section 34 CFR § 200.5(a).

10. Under the Every Student Succeeds Act, Section 34 CFR § 200.5(a)(ii), each state must administer science assessments not less than one time during grades 3 through 5; grades 6 through 9; and grades 10 through 12.

11. In order to implement the requirements of the Every Student Succeeds Act, the State Board of Education has adopted and implemented a statewide assessment of the academic standards in science, mathematics and reading/language arts which must be given by PES at least annually. A.R.S. §§ 15-741(A)(2), (B); 15-183(E)(4)

12. Arizona’s Instrument to Measure Standards (AIMS) Science (“AIMS Science”), a criterion-referenced achievement test aligned to and measuring mastery of the Arizona Science Standards, was first administered in Spring 2008 to meet the science assessment requirements of the No Child Left Behind Act.

13. AIMS Science results provide student academic achievement results to students, parents, teachers, school administrators, LEAs, and state education boards and agencies.

14. AIMS Science is administered in Grades 4, 8, and high school, during a testing window that runs from mid-March to mid-April. The tests are administered in two untimed sessions and generally take about two hours total for students to complete. At the high school level, students typically take AIMS Science in Grade 10, but may take the test in Grade 9 if their science course work is aligned to the test.

15. A.R.S. § 15-183(E)(4) and the Charter require PES to participate in the State required assessments designated by the State Board of Education, including AIMS Science.

16. As Charter Representative and Superintendent of PES, Jody Johnson was responsible for the administration of all state required assessment testing for the Schools.

17. Arizona district and charter schools were first advised in August 2017 that AIMS Science must be administered as a computer-based test. In November 2017, Arizona district and charter schools were advised of the software application that must be installed on computers for the administration of AIMS Science.

18. During the FY 2018 testing window of March 26, 2018-April 20, 2018, PES was required to administer AIMS Science to students in grades 4, 8, and high school (typically grade 10). During the testing window of March 26, 2018-April 20, 2018, PES had students in grades 4, 8, and high school enrolled at the Schools.

19. During the testing window of March 26, 2018-April 20, 2018, PES failed to administer AIMS Science to students in grades 4, 8, and high school (typically grade 10).

20. While the Charter Representative asserts that the Schools did not have the capacity to take computer-based state assessments, at no time before the AIMS Science testing window opened on March 26, 2018 did the Charter Representative or her designee explicitly contact the Arizona Department of Education (“Department”) for assistance with AIMS Science computer testing or to order paper assessments.

21. On March 30, 2018, after receiving communication from the parent of a student attending one of the Schools that PES would not be administering AIMS Science, the Department contacted PES' Test Coordinator by email, advising her of the communication and that all students in Grades 4 and 8 were required to take AIMS Science.

22. PES failed to respond to the email until after the Department contacted PES' Testing Coordinator by telephone messages and email. On April 4, 2018, the Testing Coordinator advised the Department that she had forwarded the March 30, 2018 email to the Charter Representative.

23. The Department emailed the Charter Representative directly on April 4, 2018, advising her that several attempts had been made to contact her and requesting confirmation that AIMS Science would be administered to the Schools' students. On April 5 and 6, 2018, the Charter Representative responded but did not provide confirmation that AIMS Science would be administered to the School's students.

24. On April 6, 2018, the Charter Representative advised the Department that PES did not have the technical capacity for its Schools to administer the electronic versions of the State required assessments. The Charter Representative further advised the Department that PES had administered the paper versions of the State required assessments in the subjects of reading/language arts, writing, and mathematics on April 3-5, 2018.

25. An April 6, 2018 internal email shows that the Department discussed the possibility of offering PES paper versions of AIMS Science, but also noted that PES' Tech Readiness Results Page reflected that PES listed zero computers at North Pointe Preparatory, 38 computers at Canyon Pointe Academy, and 30 computers at Pinnacle Pointe Academy; and that none of the computers had headphones. Later on April 6, 2018, the Department, by email, requested that the Charter Representative contact the Department's Deputy Associate Superintendent as soon as possible. The Charter Representative states that she contacted the

Department on April 6, 2018 and left a message; the Department states that it has no record of that call. On April 16, 2018, the Department left a telephone message for the Charter Representative stating that the Department was returning a message to call back the Charter Representative.

26. On April 18, 2018, the Department notified the Board of the issue with PES' administration of AIMS Science. At this point, it was too late for PES to order the paper versions of AIMS Science; the mandatory testing window was closing in two days.

27. On April 19, 2018, through multiple telephone calls, the Department provided directions to PES' Test Coordinator in downloading and installing the software for the electronic versions of AIMS Science. PES was able to download the software onto three computers at one of its elementary schools

28. PES failed to administer AIMS Science to any of its students by the close of the testing window on April 20, 2018.

29. PES failed to administer AIMS Science in FY 2018 as required by law and its Charter, and PES has therefore violated its Charter and state law and is subject to the revocation of its Charter.

30. On September 10, 2018, the Board voted to issue a notice of intent to revoke the Charter of PES on the basis that it failed to administer the AIMS Science in school year 2017-2018.

31. A charter revocation hearing is set at the Office of Administrative Hearings on December 12-14, 2018.

### **III. SETTLEMENT TERMS AND AGREEMENT**

32. The Parties agree that because of the Board's decision to issue a Notice of Intent to Revoke the Charter, PES is subject to the revocation of its Charter due to its failure to administer the AIMS Science in school year 2017-2018.

33. The Parties agree that A.R.S. §§ 15-183(Q) and 41-1092.07(F)(5) provide that informal disposition of this matter may be made by stipulation, agreed settlement, consent order or default.

34. The Parties agree that in consideration of their foregoing their option to proceed with the charter revocation proceedings and hearing under A.R.S. § 15-183(I)(3), it is in the best interests of the Parties to mutually resolve this matter.

35. PES waives its right to a hearing under A.R.S. § 15-183(Q) and to provide its defense, except as set forth herein, on the Stipulated Facts set forth in this Agreement.

36. By entering into this Agreement, PES agrees to the Stipulated Facts set forth in this Agreement and understands that it cannot contest any of the Stipulated Facts in the future.

37. This Agreement does not limit other actions the Board may take under the law if it determines that PES is not in compliance with its Charter or with state or federal law for any reason other than the facts that form the basis for this Agreement.

38. For the purposes of this Agreement, the term “State Standardized Assessments” shall mean AzMERIT English Language Arts, AzMERIT Math, and AIMS Science, or whatever tests may replace them and/or may be required by state or federal law, except that PES may administer locally procured achievement assessments as permitted by A.R.S. § 15-741.02

39. Throughout the term of the Charter, PES shall comply with federal and state law and with its Charter in administering all State Standardized Assessments as required by state law or locally procured achievement assessments as permitted by A.R.S. § 15-741.02 to students for the requisite number of times and in the manner required by the State Board of Education.

40. Upon execution of this Agreement, the Board shall submit a request to the Department to withhold 10 percent of the monthly apportionment of state aid that would otherwise be due PES. The Department shall adjust PES’ apportionment accordingly until the

Board receives verification from the Department that PES has administered all State Standardized Assessments for the 2018-2019 school year.

41. No later than October 30 of 2018 and 2019, PES' Charter Representative shall provide the Board with the name of its State Standardized Assessments Test Coordinator ("Test Coordinator"); PES' Test Coordinator will be someone other than the Charter Representative.

42. No later than January 30 of 2019 and 2020, PES' Charter Representative shall notify the Board in writing of the dates and times of its testing schedule for the administration of the State Standardized Assessments at each of the Schools for school years 2018-2019 and 2019-2020; the dates shall fall within the testing windows identified by the Department.

43. No later than January 30 of 2019 and 2020, PES' Charter Representative shall submit to the Board an executed copy of its Assessment Test Coordinator Information for School Year 2018-2019 and for School Year 2019-2020, identifying PES' Test Coordinator. Within ten calendar days of any change in PES' Test Coordinator, PES shall submit an updated Assessment Test Coordinator Information to the Department and to the Board.

44. No later than January 30 of 2019 and 2020, PES' Charter Representative shall submit to the Board an executed copy of its Assessment Test Security Agreement for school year 2018-2019 and for school year 2019-2020.

45. No later than March 1 of 2019 and 2020, the Charter Representative and PES' Test Coordinator shall complete all pre-test workshops and trainings that the Department requires of Test Coordinators for each of the State Standardized Assessments<sup>1</sup> and shall submit verifications of attendance to the Board within ten calendar days of completion of the trainings.

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<sup>1</sup> Information on State Standardized Assessments pre-test trainings is published in the Department's Newsletter for Test Coordinators (*The Examiner*) and sent to all Test Coordinators. The Department's State Test Coordinator also sends weekly emails to schools' Test Coordinators beginning in January.

46. No later than January 1 and March 1 of 2019 and 2020, PES' Testing Coordinator and Charter Representative shall submit a joint report to the Board on the actions taken by PES to secure and administer the State Standardized Assessments to its students at all grade levels.

47. No later than ten calendar days after the end of the State Standardized Assessments testing windows for school year 2018-2019 and school year 2019-2020, PES' Charter Representative shall submit verification to the Board that PES administered the State Standardized Assessments and completed the Data Entry Interface (DEI) within the testing windows identified by the Department.

48. The Parties agree that if PES fails to comply with the terms and conditions of this Agreement, the Board may, on no less than thirty (30) calendar days' notice, hold a hearing at which time the Board will receive information to determine whether evidence exists that PES failed to comply with the terms and conditions of this Agreement. PES shall be entitled to present all relevant evidence at this hearing. If the Board determines that a breach of this Agreement has occurred, the Board may immediately take action to revoke PES' charter to operate the Schools and terminate the Charter for breach of this Agreement.

49. This Agreement is not binding on either party until both the Board and PES' governing board accept it by the number of votes necessary to pass a measure at a public meeting. The Agreement is effective immediately upon its approval and execution by the authorized representatives of the Board and PES.

50. If either party rejects this Agreement or any part of it, then this Agreement is null and void and not binding on the Parties and the Board is free to proceed with the charter revocation hearing.

51. PES understands that it has the legal right to consult with an attorney prior to entering into this Agreement.

52. Each party shall be responsible for its own legal fees and costs, if any, in this matter.

53. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

ARIZONA STATE BOARD FOR CHARTER SCHOOLS

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By: Kathy Senseman  
President, Arizona State Board for Charter Schools  
Date: \_\_\_\_\_

POINTE EDUCATIONAL SERVICES

  
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By: Jody Johnson  
Charter Representative, Pointe Educational Services  
Date: 10/11/2018

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**CERTIFIED RESOLUTION**  
*Corporate Board/Board of Directors*  
**POINTE EDUCATIONAL SERVICES**

At its duly called meeting on 11<sup>th</sup> day of October, 2018, the Board of Directors of POINTE EDUCATIONAL SERVICES, an Arizona nonprofit corporation, duly passed the following resolution:

RESOLVED, that the Settlement Agreement as presented for No. 19F-RV-001-BCS is accepted and approved.

**Resolution declared adopted by unanimous vote of those members present and eligible to vote.**

The undersigned duly qualified and acting Secretary of the Corporate Board of POINTE EDUCATIONAL SERVICES hereby certifies that the foregoing is a true and complete copy of a resolution adopted by the Board of Directors at a duly called meeting held on the date set forth above, the original of which resolution is a part to the Corporate Board's minutes.

DATE: 10/11/2018



KENNETH P. JOHNSON  
SECRETARY, BOARD OF DIRECTORS  
POINTE EDUCATIONAL SERVICES